THE HONORABLE MARC L. BARRECA
Hearing Date: June 10, 2011
Hearing Time: 9:30 am
Hearing Location: Seattle
Response Date: June 3, 2011
Chapter 7

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

| | |
|---|---|
| In Re:<br><br>ADAM R. GROSSMAN,<br><br>Debtor. | NO. 10-19817<br><br>MOTION TO CONVERT CHAPTER 7 PROCEEDING TO CHAPTER 13 |

COMES NOW the Debtor herein, Adam Grossman, by and through the Law Offices of Jeffrey B. Wells, who is appearing for the limited purpose of representing Debtor in the present motion to convert and in the Chapter 13 proceeding if the present motion is granted, and moves the Court for entry of an order authorizing the Debtor to convert his Chapter 7 proceeding to one under Chapter 13.

**Procedural History**

This case began with the Debtor's filing of a Chapter 11 bankruptcy on August 19, 2010. At the time of the Chapter 11 filing the Debtor was involved in a very contentious dissolution proceeding in King County Superior Court. This proceeding unfortunately took up all of Debtor's time and most of his money. As a result, the Chapter 11 did not prosper. The fees paid to Debtor's attorney were subjected to a motion for disgorgement by his now ex-wife. That motion was denied, but a subsequent motion by his now ex-wife to appoint a trustee was filed on

*Law Offices*
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, Washington 98101-2332
(206) 624-0088 • Fax (206)624-0086

October 22, 2010. That motion was granted on December 22, 2010. The Trustee, Ronald Brown, reported that reorganization under Chapter 11 would accomplish little because there was limited equity in the properties. Therefore Mr. Brown moved the Court for conversion to Chapter 7 and the case was converted on March 11, 2011, over Debtor's objection.

Since the conversion to Chapter 7, the U.S. Trustee's Office, through its attorney Martin Smith, has advised Debtor and his Chapter 7 attorney that the U.S. Trustee requests that Debtor sign a waiver of his Chapter 7 discharge. The Debtor believes a waiver is not necessary because if he is allowed to convert to a Chapter 13 proceeding, he would propose a 100% Chapter 13 repayment plan.

The U.S. Trustee's Office has also indicated that before any conversion to Chapter 13, the Debtor must complete his Chapter 7 post-conversion schedules and must complete his 341 hearing in addition to waiving a Chapter 7 discharge. Debtor understands and consents to these prerequisites.

**This Court Has Authority to Grant Debtor's Motion to Convert**

Debtor recognizes that because his case was originally filed as a Chapter 11 and was subsequently converted to a Chapter 7, he does not have the nearly absolute right to convert to Chapter 13 which would otherwise be available under 11 U.S.C. §706(a). However, this Court still has the discretionary power to grant the present motion to convert to Chapter 13under 11 U.S.C. §706(c). That provision, which reads, "The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests or consents to such conversion," conveys authority to convert that is separate from 706(a), as long as the Debtor requests or consents to the conversion. Therefore, as the Debtor has requested conversion to Chapter 13 after a motion and a hearing, the Court may grant his motion.

*Law Offices*
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, Washington 98101-2332
(206) 624-0088 • Fax (206)624-0086

Several bankruptcy courts in the Ninth Circuit have held that 11 U.S.C. §706(a) does not bar conversion from Chapter 7 where the Debtor has previously converted from a Chapter 11 or 13. Rather, they have read 706(a) in conjunction with 706(c), recognizing that 706(a) provides an almost absolute right to convert where the Debtor's case was not previously converted but that 706(c) allowed the Debtor to request a conversion even where the case was previously converted. *See e.g.* In re Gerald Walker, 77 B.R. 803 (Bankr. Nevada, 1987); In re Johnson*, 116 B.R. 224* (Bankr. Id., 1990).

Allowing a Debtor to reconvert where appropriate is consistent with the policies behind the rehabilitative chapters of the Bankruptcy Code. As noted by the 9th Circuit Bankruptcy Appellate Panel in Croston v. Davis*,* 313 B.R. 447, 450, "there is a "no-lose" rationale for the right to convert [because] all of the reorganization chapters require that creditors receive at least as much as would be paid in a chapter 7 liquidation." Therefore, although 706(a) implies that Congress was unwilling to allow debtors more than one guaranteed opportunity to unilaterally convert their case, debtors may still convert even after a prior conversion under 706(c) because "the decision whether to convert is left in the sound discretion of the court, based on what will most inure to the benefit of all parties in interest." In re Johnson, *id at* 226, quoting House Report No. 595, 95th Cong., 1st Sess. 380 (1977).

**Debtor is Qualified for Chapter 13**

Debtor previously filed a motion to convert his case to a Chapter 13proceeding contemporaneously with the Chapter 11 Trustee's motion to convert the case to Chapter 7. In his objection to Debtor's motion, the Trustee indicated that he did not believe Debtor was eligible for Chapter 13 due to the amount of his secured debts.

As set forth on the accompanying declaration, despite these objections, Debtor believes he is qualified to be a Chapter 13 debtor based on the size of his secured and unsecured debts.

*Law Offices*
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, Washington 98101-2332
(206) 624-0088 • Fax (206)624-0086

On his original schedules Debtor incorrectly listed a loan on real property at 6821 39th Avenue NE as a secured debt. He has since discovered through the course of his dissolution proceedings that he was never obligated on that loan; rather, his ex-wife was the sole obligor. For that reason he amended his schedules to correctly reflect his secured obligations at the time of filing. See 2nd amended schedules filed March 3, 2011.

Debtor also corrected his schedules to show that the $300,000 which was erroneously listed as a secured debt owed to Bugni Law Firm is in fact a debt in the amount of $225,000 and that it was never owed to Bugni Law Firm. Rather, the note holder is Lyman Opie. He has also changed the $16,000 debt originally listed on Schedule D as owed to Beth Shalom Preschool. That debt is not secured and therefore was removed on the amended schedule D.

The trustee also claimed in his objection to conversion to Chapter 13 that Debtor's schedules are inaccurate because the listed amounts do not correspond to the higher amounts on the deeds of trust. The discrepancy is not a result of an inaccurate schedule, but rather because not all principal was borrowed and accumulated interest was not included in the reported debt owed as of the date of filing.

Based on the foregoing, Debtor believes that he was eligible to be a Chapter 13 debtor on the date he originally filed his case, and that this still holds true as he remains well within the allowable secured and unsecured debt limits of Chapter 13.

In determining whether a debtor qualifies for Chapter 13 under the jurisdictional limits of 109(e), courts look to the Debtor's financial situation as of "the date of filing." *11 U.S.C. 109(e).* Only if bad faith is indicated do they look beyond the face of the schedules. "Section 109(e) requires no more than a 'realistic' assessment of the debtor's 'state of affairs as it reasonably appeared on the date of filing.'" *In re Pisczek*, 269 B.R. 641, 643 (Bankr. E.D. Michigan, 2001), quoting *In re Pearson*, 773 F.2d 751, 758 (6th Cir. 1985).

*Law Offices*
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, Washington 98101-2332
(206) 624-0088 • Fax (206)624-0086

Courts interpreting this issue "have narrowly construed . . . *§ 109(e)* [to] hold that a bankruptcy court cannot look to post-petition events to determine the amount of the debt." *In re Slack*, 187 F.3d 1070, 1073 (9th Cir. 1999). Therefore, Debtor qualifies for a Chapter 13 bankruptcy based upon the amounts of his secured and unsecured debts at the time of the filing his original petition which, as set forth on the amended Schedule F and 2nd amended Schedule D on file with the court, were less than the jurisdictional limits under 109(e). The date of filing is the relevant factor even where the Debtor has previously converted his case. 11 U.S.C. §348(a) states that "conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief" [emphasis added].

**Conversion is in Best Interest of Debtor's Creditors**

As set forth on the accompanying declaration, Debtor believes his experience, education, and job situation will assist him in maximizing the funds available to creditors through a liquidation and plan payments. Therefore, he believes conversion to Chapter 13 is warranted as it provides the best option for his creditors.

In addition to Debtor's liquidation efforts, he brings the present motion with the intention of proposing a one hundred percent Chapter 13 repayment plan. Under the proposed plan Debtor would make monthly Chapter 13 payments of $3,624 based upon his net income of $6,425 from GPI Holdings and $1,704 from Keywest per month. Monthly payments of $2,999 will pay his unsecured debt in full within 48 months.

Debtor's Chapter 11 filing was very difficult and came at a time when he did not have the resources or time necessary to make it successful. He was involved in a very contentious divorce

*Law Offices*
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, Washington 98101-2332
(206) 624-0088 • Fax (206)624-0086

and was self employed. That period is now behind Debtor as he is now single and employed by GPI Holdings. Debtor is now able to reorganize based on his income and expertise such that he expects to be able to afford to pay a 100% dividend through a Chapter 13 plan.

**Conclusion**

Based on the foregoing, Debtor respectfully requests that the Court grant his motion and authorize him to convert his proceeding to a Chapter 13 case.

Dated this 19th day of May, 2011.

Law Offices of Jeffrey B. Wells

*/s/ Jeffrey B. Wells*
Jeffrey B. Wells, WSBA #6317
Attorney for Debtor

*/s/ Emily Jarvis*
Emily Jarvis, WSBA #41841
Attorney for Debtor

*Law Offices*
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, Washington 98101-2332
(206) 624-0088 • Fax (206)624-0086

THE HONORABLE MARC L. BARRECA
Hearing Date: June 10, 2011
Hearing Time: 9:30 am
Hearing Location: Seattle
Response Date: June 3, 2011
Chapter 7

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

| | |
|---|---|
| In Re:<br><br>ADAM R. GROSSMAN,<br><br>Debtor. | NO. 10-19817<br><br>DECLARATION OF ADAM GROSSMAN |

I am the Debtor herein.

The U.S. Trustee's Office, through its attorney Martin Smith, has advised me and my attorney that he would ask that I sign a waiver of my Chapter 7 discharge. If this request has been made because I do not pass the means test for Chapter 7, into which I have been involuntarily converted, the mistake of my involuntary conversion into Chapter 7 should be corrected. If this request has been made because of any actions I have undertaken which are believed to be improper, I was not aware that any of my actions in the Chapter 11 proceedings were considered improper at the time I undertook them. In fact, while testifying in court under oath in December during my divorce trial, I was specifically asked if I had a court order to purchase property and, to the great surprise of opposing counsel during cross examination, I read from the court order the exact passage which permitted such transactions.

*Law Offices*
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, Washington 98101-2332
(206) 624-0088 • Fax (206)624-0086

Nevertheless, I now find myself in the position of having my assets involuntarily and inefficiently liquidated by the Chapter 7 trustee at a tremendous loss of value, while being asked to waive my right to a discharge, which is the only advantage I see as an outcome of a Chapter 7 liquidation. My creditors find themselves in the position of receiving only fractional repayment of debt without full repayment.

For these reasons, I am bringing the present motion to convert my case to a Chapter 13 proceeding with the proposal of a 100% Chapter 13 repayment plan.

I have been a real estate investor for over 20 years and have a degree from MIT and an MBA from the Wharton School of Business which give me the experience and knowledge to effectively manage my real estate assets. My family has been in the real estate business for even longer, and my late father was both a real estate attorney and real estate broker for decades in the area where I own real estate and focus my investment activity. Immediately prior to being served with divorce papers and for a short while afterwards, I had spent considerable time and planning to significantly scale my holdings of real estate in the Shasta County region through capital fundraising and the launch of a second asset management fund. My first asset management fund overall yielded a positive return to investors during a period when the market declined substantially. During the Financial Crisis of 2008, my fund actually returned approximately 10% for the year. The following distinction is very important to understand about me: investment activity has been very profitable, but divorce activity has been very costly.

I believe that through my management and my recently acquired employment with GPI Holdings, from which I earn a gross monthly salary of $7,000 ($6,000 plus an estimated $1,000 in

*Law Offices*
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, Washington 98101-2332
(206) 624-0088 • Fax (206)624-0086

overtime, bonuses, or other consulting), I will be able to repay all of my creditors in full through a Chapter 13 plan.

Through my employment at GPI Holdings I am able to realize more money in the management and disposition of real estate than can be realized by the Chapter 7 trustee. Specifically, GPI Holdings is able to offer financing for buyers who may have difficulty in obtaining bank loans in this much stricter regulatory climate. As a result I can sell property quicker and at higher prices than through the traditional system of buyers obtaining bank financing and the use of real estate brokers.

Because GPI Holdings buys and sells and holds property on its own behalf, it does not require the use of a broker and the attendant commissions because a licensed broker is not required when a principal is transacting on its own behalf.

Set forth in Exhibit A, attached, is a spreadsheet of my real estate showing the expected realization to creditors under a liquidation by the Chapter 7 trustee. By contrast, I am proposing a 100% Chapter 13 repayment plan.

In addition to the liquidation of real estate, I propose to pay to my creditors in a Chapter 13 plan monthly payments of $3,624 based upon net income of $6,425 from GPI Holdings (as described above) and payments of $1,704 from Keywest Financial LLC. Monthly payments of $2,999 will pay my unsecured debt in full within 48 months.

The Chapter 11 filing was very difficult for me. I was involved in a very contentious divorce and was self employed. I was advised that it would be very difficult for me to conduct business as a self-employed person during the divorce proceedings -- advice which was very prescient. That

*Law Offices*
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, Washington 98101-2332
(206) 624-0088 • Fax (206)624-0086

period is now behind me. I am now single and am employed by GPI Holdings.

I believe I qualify to be a Chapter 13 debtor despite the objections to the contrary previously raised by the Chapter 11 trustee. On my original schedules I incorrectly listed a loan on real property at 6821 39th Avenue NE as one of my secured debts. Through the course of my dissolution proceedings it was shown that I was never obligated on that loan; rather, my ex-wife was the sole obligator. I was never listed as a co-owner of the property. I was not on the deed Moreover, I had signed a quit-claim deed in 2007 for the purpose of allowing my (then) wife to refinance her property. For that reason I amended my schedules to correctly reflect my secured obligations at the time I filed my petition. See 2nd amended schedules filed March 3, 2011.

I also corrected my schedules to show that the $300,000 which was erroneously listed as a secured debt due to a clerical error owed to Bugni Law Firm is in fact a debt in the amount of $225,000 and that it was never owed to Bugni Law Firm. Rather, the note holder is Lyman Opie. I have also changed the $16,000 debt originally listed on Schedule D as owed to Beth Shalom. That debt is not secured and therefore was removed on my amended schedules as a secured debt.

The Chapter 11 Trustee also claimed in his objection that my debt schedules are inaccurate because the listed amounts do not correspond to the higher amounts on the deeds of trust. The discrepancy is not because my 2nd amended Schedule D is inaccurate, but rather because not all principal was borrowed and accumulated interest was not included in the reported debt owed as of the date of filing. This is similar to any HELOC in which the amount of principal and interest may go up and down. In fact, in several instances I did borrow additional money confirming the HELOC-nature of the listed amount.

*Law Offices*
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, Washington 98101-2332
(206) 624-0088 • Fax (206)624-0086

Based on the foregoing, I believe that I was eligible to be a Chapter 13 debtor on August 19, 2010, the date I originally filed my case, and that I still am as I remain well within the allowable secured and unsecured debt limits of Chapter 13.

I understand from my attorney that the U.S. Trustee would not necessarily oppose my conversion to Chapter 13 so long as I complete my post-petition Chapter 7 schedules, complete my 341 hearing in Chapter 7, and sign a waiver of Chapter 7 discharge. Such a waiver is not necessary as I am proposing a 100% Chapter 13 repayment plan. I understand that the Chapter 7 trustee will have an administrative claim in the Chapter 13 proceeding.

In addition and based upon the stance taken by the US Trustee's office, I really have no choice but to repay my creditors through a Chapter 13 plan. Luckily, my income is such that I can afford to pay my unsecured creditors a 100% dividend. Thus, a Chapter 13 will result in a more beneficial outcome for my creditors, who otherwise face the likely prospect of receiving only a fraction of the money owed to them through a liquidation.

For the foregoing reasons, I respectfully request conversion of my case to a Chapter 13 proceeding.

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct to the best of my information and belief.

Dated this 18th day of May, 2011.

*/s/ Adam Grossman*
Adam Grossman

*Law Offices*
JEFFREY B. WELLS
502 Logan Building
500 Union Street
Seattle, Washington 98101-2332
(206) 624-0088 • Fax (206)624-0086

Exhibit A

**Analysis of Chapter 7 Trustee's Liquidation Proposal**

| Address | Zillow 04/2011 | 6% sales cost | 2% closing cost | $5K nonpaying tenant eviction cost | CA mandatory tax withholding | Gross Proceeds |
|---|---|---|---|---|---|---|
| 1679 Strauss Lane | $186,000 | -6% | -2% | ($5,000) | ($15,000) | $151,343 |
| 773 Metro Way | $166,000 | -6% | -2% | ($5,000) | ($5,000) | $142,919 |
| 20710 Glennview | $262,500 | -6% | -2% | ($5,000) | ($8,000) | $228,815 |
| Gross Asset Liquidation Proceeds | | | | | | $523,077 |
| Debt | | | | | | $1,092,298 |
| Fees paid to trustee for liquidated assets: | | | | | | $31,475 |
| Other fees paid to trustee for legal and administrative costs: (est.) | | | | | | $50,000 |
| Liquidation Value | | | | | | ($650,696) |
| Percent average creditor receives: (*) | | | | | | 28% |
| Percent non-priority creditor receives: (*) | | | | | | 10% - 20% |

Assumptions: depletion of assets through Chapter 7 proceedings; void Grossman / Keywest contract; void lien security (incurs costs; does not decrease total debt); list houses with realtor, watch them not sell, lower price; liquidate through sales that do not maximize the value of the estate. The average days on the market is about 180 and banks, who have strong incentive to sell more quickly reduce their price by 25% on average.

Assumption: (*) Will be foreclosed before it can be sold. Trustee on February 22, 2011, wrote in two separate forums, first, to Debtor that he "does not intend to [contest]" State Court's decree which include that Debtor should arrange to pay the mortgages for this property; and, second, to the Court, that the rents collected which are used to pay the mortgages be seized and the property management company that paid the mortgages be fired.

THE HONORABLE MARC L. BARRECA
Hearing Date: June 10, 2011
Hearing Time: 9:30 a.m.
Hearing Location: Seattle
Response Date: June 3, 2011
CHAPTER 7

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

| | |
|---|---|
| In Re:<br><br>ADAM R. GROSSMAN,<br><br>Debtor. | NO. 10-19817<br><br>NOTICE OF HEARING ON MOTION TO CONVERT CHAPTER 7 CASE TO CHAPTER 13 PROCEEDING |

PLEASE TAKE NOTICE that the Debtor's **Motion to Convert Chapter 7 Case to Chapter 13 Proceeding** IS SET FOR HEARING AS FOLLOWS:

| | | | |
|---|---|---|---|
| JUDGE: | Marc L. Barreca | TIME: | 9:30 a.m. |
| PLACE: | US Bankruptcy Court<br>700 Stewart Street<br>Courtroom 7106<br>Seattle, WA 98101 | DATE: | June 10, 2011 |

IF YOU OPPOSE the Motion, you must file your written response with the Court and serve it upon the undersigned and the Chapter 7 Trustee NOT LATER THAN THE RESPONSE DATE, which is June 3, 2011.

IF NO RESPONSE IS TIMELY FILED AND SERVED, the Court may, in its discretion, GRANT THE MOTION PRIOR TO THE HEARING, WITHOUT FURTHER NOTICE, and strike the hearing.

DATED this 19th day of May, 2011.

Law Offices of Jeffrey B. Wells

*/s/ Jeffrey B. Wells*
Jeffrey B. Wells, WSBA #6317
Attorney for Debtor

*Law Offices*
JEFFREY B. WELLS
502 LOGAN BUILDING
500 UNION STREET
SEATTLE, WA 98101-2332
(206) 624-0088 • Fax (206) 624-0086

THE HONORABLE MARC L. BARRECA
Hearing Date: June 10, 2011
Hearing Time: 9:30 a.m.
Hearing Location: Seattle
Response Date: June 3, 2011
Chapter 7

THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

| | |
|---|---|
| In Re:<br><br>ADAM R. GROSSMAN,<br><br>Debtor. | NO. 10-19817<br><br>ORDER CONVERTING CHAPTER 7 CASE TO CHAPTER 13 PROCEEDING<br><br>**- Proposed -** |

THIS MATTER having come on before the undersigned Judge of the above-entitled Court upon Debtor's motion to convert the present Chapter 7 proceeding to one under Chapter13, and proper notice having been given to all creditors and parties of interest, and good cause having been shown, and no objections having been filed; Now, Therefore,

IT IS HEREBY ORDERED that this proceeding be and hereby is converted to a proceeding under Chapter 13.

U.S. BANKRUPTCY COURT JUDGE

Presented by:

Law Offices of Jeffrey B. Wells

*/s/ Jeffrey B. Wells*
Jeffrey B. Wells, WSBA #6317
Attorney for Debtor

*Law Offices*
JEFFREY B. WELLS
502 LOGAN BUILDING
500 UNION STREET
SEATTLE, WA 98101-4037
(206) 624-0088 • Fax (206) 624-0086